

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

HAYWARD INDUSTRIES, INC.,
Plaintiff, Counterclaim Defendant

v.

Civil Action No. 3:20-CV-710 -MOC-DSC

BLUEWORKS CORPORATION,
BLUEWORKS INNOVATION
CORPORATION, NINGBO C.F.
ELECTRONIC TECH CO., LTD; NINGBO
YISHANG IMPORT AND EXPORT CO.,
LTD.

Defendants, Counterclaim Plaintiffs.

NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to Local Civil Rule 7.1(j), Plaintiff Hayward Industries, Inc., directs this Court's attention to the following opinion that was published after Hayward filed its motion to exclude Defendants' expert Kathleen Grace (Doc. No. 211).

Solid 21, Inc. v. Richemont North America, Inc., et al., No. 19-CV-1262 (AS), 2023 WL 6058614 (S.D.N.Y. Sept. 18, 2023), attached as Exhibit 1, addresses the propriety of a defendant's damages expert relying on a trademark survey for an appointment analysis. The court held that the defendant's damages expert improperly used consumer survey results, which measured brand awareness rather than consumer preferences, to apportion damages. 2023 WL 6058614 at *5-6. This decision is relevant because Defendants' expert, Dr. Kathleen Grace, bases her damages apportionment opinion on Hayward's likelihood of confusion survey, which has nothing to do with apportionment of damages.

Date: September 27, 2023

HAYWARD INDUSTRIES, INC.

By its attorneys,

/s/ Patrick G. Spaugh

Patrick G. Spaugh (N.C. Bar No. 49532)

Russ Ferguson (N.C. Bar No. 39671)

Womble Bond Dickinson (US) LLP

301 South College Street, Suite 3500

Charlotte, NC 28202

Patrick.Spaugh@wbd-us.com

Russ.Ferguson@wbd-us.com

Erik Paul Belt (*pro hac vice admitted*)

ebelt@mccarter.com

James Donoian (*pro hac vice admitted*)

jdonoian@mccarter.com

Anne E. Shannon (*pro hac vice admitted*)

ashannon@mccarter.com

Alexander L. Ried (*pro hac vice admitted*)

aried@mccarter.com

McCarter & English, LLP

265 Franklin Street

Boston, MA 02110

T: (617) 449-6500

F: (617) 607 9200